

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: Michigan

ELIGIBILITY CONDITIONS AND REQUIREMENTS

Enforcement of Compliance for Nursing Facilities

Civil Money Penalty: Describe the criteria (as required at §1919(h)(2)(A)) for applying the remedy.

Specified Remedy

(Will use the criteria and notice requirements specified in the regulation.)

☒ Alternative Remedy

(Describe the criteria and demonstrate that the alternative remedy is as effective in deterring non-compliance. Notice requirements are as specified in the regulations.)

Civil Monetary Penalty - Alternate Remedy

The issuance of a civil monetary penalty (CMP) is a specified remedy in certain situations. The issuance of a CMP is determined by the presence of certain specified deficiencies. CHART 1 provides graphic representation of the scope and severity levels that will warrant imposition of a CMP. In CHART 2 the daily amount is specified, as is the difference in penalty amounts for providers who are considered to be historically compliant versus poor performers. [Facilities who are considered to be historically compliant are given a "date certain" before remedies, including CMP's, are applied. If the facility comes into substantial compliance before the date certain the civil monetary penalty (and other remedies) can be avoided. The "date certain" does not apply when Immediate Jeopardy exists.]

Prior notice is not required before imposition of CMP's. Unless a date certain is allowed, a penalty equivalent to a one day penalty will apply in all fineable circumstances even if the violation(s) is (are) immediately corrected. The daily CMP will end on the day prior to the determination of substantial compliance, or the day prior to the determination that a civil monetary penalty is no longer warranted. MDPH determines compliance.

Continuing assessment of CMP's may cease when facility cooperation exists and one of the situations below occurs:

- the appointment of a receiver by a circuit court
- closure of a facility as evidenced by the filing of a notice of discontinuance of operation pursuant to section 333.21785 of the Public Health Code
- appointment of a temporary manager for the purpose of overseeing the orderly closure of the facility

Two additional situations (described below) require imposition of a daily civil monetary penalty.

Failure to Re-admit a Qualified Medicaid Resident

A daily CMP of \$400 would be imposed when an enrolled Medicaid facility refuses to re-admit a qualified Medicaid resident (as defined by HCFA) following hospitalization. This daily CMP would start on the date the State receives a complaint that it later validates that a readmission has been denied and continues until the resident is offered the next qualifying available Medicaid bed. The facility will be notified by MDPH when an allegation of failure to re-admit a qualified Medicaid resident is being investigated. A date certain will not be applied.

Removal or Transfer of Residents

A CMP of \$1,000 per day will be imposed for each day that any Medicaid resident had to be moved from the facility due to deficiencies that require removal or transfer of one or more Medicaid resident/s to another setting. The penalty will cease when deficiencies causing the transfers have been corrected, MDPH has approved readmissions, and all residents are given the opportunity to return to the facility. This remedy will apply when the State orders removal or transfer of residents. A date certain will not be applied.

Increase in Civil Monetary Penalty

Daily CMP amounts will increase (be multiplied by a factor of 1.5) by fifty percent (50%) for repeat deficiencies. A "repeat deficiency" occurs when deficiencies in the same regulatory grouping of requirements are found again at the next survey. This 50% increase also applies when a facility has been found to have provided Substandard Quality of Care on the last three (3) consecutive standard surveys. Increases will not exceed the \$10,000 per day specified federal maximum.

TN No. 95-19

Supersedes

TN No. NA 94-21

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Civil Monetary Penalty - Alternate Remedy

Appeals

The department will accept appeals of the assessment of a civil monetary penalty. Appeals accepted as administratively appealable will be conducted in accordance with the department's Medicaid Provider Reviews and Hearings Rules, R400.3401 through R400.34025. The application of the civil monetary penalty system and the daily penalty are not, however, administratively appealable. A facility may waive its right to appeal, in writing, within 30 calendar days of the notice of the deficiency and CMP, and have its CMP reduced by 35%. A certified check, payable to the State of Michigan, must accompany the signed waiver. If the waiver is not elected in writing by the provider the 35% reduction will not be allowed. If **voluntary** transmittal of the penalty amount does not occur within 30 days of the penalty notification or within 15 calendar days of issuance of the appeal results, the CMP will be recovered by gross adjustment against the next available Medicaid warrant. No installment schedules are allowed for payment of the CMP. (Civil monetary penalties are not allowable Medicaid costs.)

Use of Funds

Money collected by MDSS as a result of civil monetary penalties will be put into a special fund to be applied to the protection of the health and property of residents of any nursing facility that the State or HCFA finds deficient. Money withheld by the State from funds due a facility (because of lack of payment of civil monetary penalties by the facility) will also be deposited in this fund.

Demonstrate that the alternate remedy is as effective in deterring non-compliance.

The State of Michigan does not allow for the accrual of interest on civil monetary penalties. If the entire penalty amount is not submitted by the deadline, it is recovered by gross adjustment against the next available Medicaid warrant, therefore, interest is not allowed to accrue. Based on prior experience this alternative to the federal regulation requiring collection of daily interest was found to be administratively simple, fine collection was not unduly delayed, and resolution of the deficient situation was swift.

The requirement specifies 60 days for appeal. In accordance with all other appeal timeframes and the State Administrative Procedures Act, the State of Michigan will allow 30 days for appeal. This amount of time has been adequate for all other types of appeals. It promotes administrative simplicity and reduces confusion in that two different appeals timelines/systems do not have to be administered.

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Civil Monetary Remedy- Alternate Remedy CHART 1

The grid below is used to identify the appropriate category of remedies based on the scope and severity factors. **Civil monetary penalties** are included as remedies in two of the three remedy categories.

Category one (Cat. 1)

Does not include a civil monetary penalty

Category two (Cat. 2)

\$300 to a maximum of \$3,000 per day

Category three (Cat. 3)

\$3050 to a maximum of \$10,000 per day

Immed. Jeopardy (4)	[J] * POC required Cat. 3 required Cat 1 & 2 additional	[K] * POC required Cat. 3 required Cat. 1 & 2 additional	[L] * POC required Cat. 3 required Cat. 1 & 2 additional
Actual Harm but no Immed. Jeopardy (3)	[G] POC required Cat. 2 required Cat. 1 additional	[H] * POC required Cat. 2 required Cat. 1 additional	[I] * POC required Cat. 2 required Cat. 1 additional Temp. mgmt additional.
No Actual Harm- potential for more than Minimal Harm - No Immed. Jeopardy (2)	[D] POC required Cat. 1 required Cat. 2 additional	[E] POC required Cat. 1 required Cat. 2 additional	[F] * POC required Cat. 2 required Cat. 1 additional
No Actual Harm - potential for no more than minimal harm. (1)	[A] + No Remedies	[B] + POC required	[C] + POC required

Isolated (1)

Pattern (2)

Widespread (3)

+ Substantial Compliance

* Substandard Quality of Care: any deficiency in Resident Behavior and Facility Practices, Quality of Life or in Quality of Care that constitutes: Immediate Jeopardy to resident health or safety; or, a pattern of or widespread actual harm that is not Immediate Jeopardy; or, a widespread potential for more than minimal harm that is not Immediate Jeopardy, with no actual harm.

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Supervisor

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Civil Monetary Remedy- Alternate Remedy
CHART 2

*Citation Level may be expressed *either* by a single letter representing scope and severity or as a "fraction". The numerator of the "fraction" consists of scope, the denominator of the "fraction" is the severity level. Scope indicates how much/many of the facility/residents are/may be affected. Severity indicates the potential for or actual level of harm that has occurred.

CITATION LEVEL *	Historically Compliant (Date Certain)	Poor Performer (Immediate Application)
1/2 (D)	No CMP	No CMP
2/2 (E)	No CMP	No CMP
3/2 (F)	No CMP	No CMP
1/3 (G)	CMP \$300/day	CMP \$1000/day
2/3 (H)	CMP \$400/day	CMP \$1500/day
3/3 (I)	CMP \$500/day	CMP \$2000/day
1/4 (J)	CMP \$3050/day	CMP \$3050/day
2/4 (K)	CMP \$3500/day	CMP \$3500/day
3/4 (L)	CMP \$4000/day	CMP \$4000/day

The CMP daily amounts stated are not maximums. Potential exists for the daily amounts to be increased 50% for either a repeat deficiency (when deficiencies in the same regulatory grouping of requirements are found again at the next survey) or repeated non-compliance. (Repeated non-compliance refers to findings of SQC on three consecutive standard surveys and not on the basis that the exact tag number of the deficiency was repeated or that the substance of the deficiency was repeated.)

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Supersedes

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